

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

cages at work during regular and overtime hours. She became aware of her condition on July 11, 2016 and realized that it was causally related to factors of her federal employment on July 18, 2016. Appellant stopped work on July 14, 2016.

The employing establishment controverted appellant's claim. In a statement dated July 21, 2016, the postmaster indicated that appellant was hired on November 14, 2015 and worked three jobs prior to that time. He indicated that appellant never reported her injury to coworkers or customer service supervisor and she was not hindered in any capacity at work.

By development letter dated August 15, 2016, OWCP advised appellant of the type of evidence needed to establish her claim. It requested that appellant respond to a questionnaire regarding the factual elements of her claim.

In an undated statement appellant described working the morning or night dispatch as a clerk. She had many responsibilities, including pushing and pulling all-purpose containers (APC), cages, and pallets off trucks. Appellant indicated that the APC, cages, and pallets were filled with packages weighing 1 ounce to 70 pounds. She reported unloading the APC's and pallets and moving the packages to the proper APC so that they could be delivered to the correct location.

Appellant was treated by Dr. Dwain M. Rogers, a Board-certified general surgeon, from July 18 to 27, 2016, for a two-week history of left inguinal pain and umbilical pain after lifting heavy boxes at work. Upon physical examination, Dr. Rogers noted reducible bilateral inguinal hernias (BIH) and umbilical hernias. He diagnosed reducible BIH and umbilical hernias and recommended open BIH repairs. In an operative report dated July 20, 2016, Dr. Rogers performed a laparoscopic bilateral inguinal hernia repair using mesh and an open umbilical hernia repair. He diagnosed umbilical hernia and bilateral indirect inguinal hernia, reducible repair.

The employing establishment continued to controvert appellant's claim. In a statement dated September 7, 2016, appellant's postmaster asserted that appellant provided an inaccurate picture of her job duties and tried to expand her workload. He noted that parcels ranging up to 70 pounds were rarely seen and appellant was trained in team lifting.

Appellant submitted an undated statement describing her medical treatment for her diagnosed hernias including surgery on July 20, 2016. She noted her physician would not release her to work until after an August 29, 2016 examination. In response to OWCP's development questionnaire, appellant indicated that she lifted up to 70 pounds and pushed cages weighing over 70 pounds on a daily basis. She noted that her job required her to lift packages and sort them out of cages six to seven days a week, four to six hours a day. Appellant reported experiencing pain around her belly button on July 13, 2016 and subsequently seeking treatment and undergoing surgery.

In a September 6, 2016 report, Dr. Rogers noted that appellant presented on July 18, 2016 with left inguinal and umbilical pain after lifting heavy boxes at work. On July 20, 2016 he performed umbilical hernia and bilateral direct inguinal hernias reducible. In a duty status report dated September 14, 2016, Dr. Rogers returned appellant to work four to six hours a day with restrictions.

By decision dated January 18, 2017, OWCP denied appellant's claim, finding that the evidence of record did not support that the injury or event occurred as alleged.

On February 16, 2017 appellant requested an oral hearing before an OWCP hearing representative. She submitted an undated statement and noted her disagreement with OWCP's decision denying her claim.

On June 29, 2017 OWCP notified appellant that a telephone hearing would be held on August 18, 2017 at 10:00 a.m., Eastern Standard Time (EST). It instructed appellant to call the provided toll-free number shortly before the hearing time and enter the passcode to gain access to the conference call. OWCP mailed the June 29, 2017 notice of hearing to her address of record. Appellant did not call in to attend the scheduled hearing.

By decision dated August 31, 2017, OWCP found that appellant had abandoned her request for a hearing. It determined that appellant received a written notice of the hearing 30 days before the scheduled hearing, but did not appear and that she failed to timely explain her absence from the scheduled hearing.

### **LEGAL PRECEDENT**

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>2</sup> Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>3</sup>

A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>4</sup> Where it has been determined that a claimant has abandoned his or her request for a hearing, OWCP's Branch of Hearings and Review will issue a formal decision.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>3</sup> 20 C.F.R. § 10.617(b).

<sup>4</sup> *Id.* at § 10.622(f).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

### **ANALYSIS**

On January 18, 2017 OWCP denied appellant's claim. Appellant timely requested an oral hearing. In a June 29, 2017 letter, OWCP notified her that a telephone hearing was scheduled for August 18, 2017 at 10:00 a.m. EST. It instructed appellant to telephone a toll-free number and enter a passcode to connect with the hearing representative. Appellant did not telephone at the appointed time, nor did she request a postponement of the hearing, or explain her failure to appear at the hearing within 10 days of the scheduled hearing date of August 18, 2017. The Board therefore finds that she abandoned her request for a hearing.

On appeal appellant asserts that she did not receive a letter from OWCP scheduling a telephone hearing on August 18, 2017. She indicated that she would like to reschedule the hearing. The record supports that OWCP's letter dated June 29, 2017 was sent to appellant at the address of record and does not indicate that it was returned as undeliverable. Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>6</sup> The Board finds that she failed to request a postponement of the scheduled hearing, failed to appear at the scheduled hearing, nor did she provide any notification for such failure within 10 days of the scheduled date. Appellant therefore abandoned her request for an oral hearing.

### **CONCLUSION**

The Board finds that appellant abandoned her request for a telephone hearing.

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<sup>6</sup> *A.C. Clyburn*, 47 ECAB 153 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board